

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

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CARMINE FIORE, WILLIAM NORGDARD, STEVE	:	
MEJIA, and DOMINIC SPACCIO,	:	
	:	Index No.
Plaintiffs,	:	
	:	COMPLAINT
-against-	:	
	:	
	:	
NEW YORK STATE CANNABIS CONTROL	:	
BOARD, NEW YORK STATE OFFICE OF	:	
CANNABIS MANAGEMENT, TREMAINE	:	
WRIGHT, in her official capacity as the Chairwoman	:	
of the New York State Cannabis Control Board, and	:	
CHRIS ALEXANDER, in his official capacity as	:	
Executive Director of the New York State Office of	:	
Cannabis Management,	:	
	:	
Defendants.	:	
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Plaintiffs CARMINE FIORE (“Fiore”), WILLIAM NORGDARD (“Norgard”), STEVE MEJIA (“Mejia”), and DOMINIC SPACCIO (“Spaccio,” together with Fiore, Norgard, and Mejia, “Plaintiffs”), as and for their Complaint against Defendants the NEW YORK STATE CANNABIS CONTROL BOARD (“CCB”), the NEW YORK STATE OFFICE OF CANNABIS MANAGEMENT (“OCM”), TREMAINE WRIGHT, in her official capacity as Chairwoman of the New York State Cannabis Control Board (“Wright”), and CHRIS ALEXANDER, in his official capacity as Executive Director of the New York State Office of Cannabis Management (“Alexander,” and together with CCB, OCM, and Wright, “Defendants”), state and allege as follows:

NATURE OF THE ACTION

1. This action for declaratory and injunctive relief arises out of Defendants' unconstitutional foray into legislative policymaking in violation of New York's separation of powers doctrine.

2. On March 31, 2021, the Marihuana Regulation and Taxation Act (the "MRTA")¹ was signed into law by then-Governor Andrew Cuomo, who proclaimed at the time that "[t]his landmark legislation provides justice for long-marginalized communities, embraces a new industry that will grow the economy, and establishes substantial safety guards for the public."²

3. To that end, the MRTA legalized cannabis for adults over the age of twenty-one and established OCM as an independent agency within the Division of Alcoholic Beverage Control. *See* MRTA § 8. The MRTA also entrusted OCM (and CCB, the entity that oversees OCM) with, *inter alia*, (i) launching New York's adult-use cannabis program, (ii) creating a safe, licensed, and regulated cannabis industry, (iii) generating sufficient tax revenue through cannabis sales to re-invest in communities disproportionately harmed by federal and state drug policies, and (iv) "reduc[ing] the illegal drug market . . . and reduc[ing] participation of otherwise law-abiding citizens in the illicit market." *See id.* §§ 2, 51.

4. Rather than perform the tasks required by the MRTA, CCB and OCM have improperly assumed the role of the Legislature to impose their own social and economic policies over those of New York's elected officials and, by extension, their constituents. This

¹ The Marihuana Regulation and Taxation Act ("MRTA") (Chapter 92 of the Laws of 2021) (signed March 31, 2021).

² *See* Rich Mendez, *Governor Cuomo Signs Bill to Legalize Recreational Marijuana in New York*, CNBC (March 30, 2021), [bit.ly/3ZQ2YKo](https://www.cnbc.com/2021/03/30/cuomo-signs-bill-to-legalize-recreational-marijuana-in-new-york.html), a true and correct copy of which is attached hereto as Exhibit A.

unconstitutional overreach violates the separation of powers doctrine. *See* N.Y. CONST. art. III, § 1.

5. Chief among Defendants' transgressions was their creation of an entirely new licensing category called the Conditional Adult-Use Retail Dispensary (the "CAURD") license. As set forth more fully below, Defendants improperly limited eligibility for this special, yet legally impermissible, license category to only "justice involved individuals" who own a profitable "qualifying business."³ Then, Defendants (i) opened the adult-use retail dispensary application period for only those individuals that qualified as CAURD applicants, and (ii) indefinitely postponed the licensing of hundreds of additional dispensaries necessary to satisfy consumer demand.

6. Leaving aside (for the moment) the fact that many individuals that qualify as "social equity" applicants do not fall within the CAURD program, and the fact that the program violates the U.S. Constitution's Dormant Commerce Clause,⁴ Defendants' decision to create this exclusive CAURD category in the first instance, and then provide those CAURD applicants with the first opportunity to obtain an adult-use retail dispensary license, violates (i) the MRTA's plain and unambiguous provisions, which required CCB to, *inter alia*, open the window for all adult-use

³ As OCM's website provides, a "justice involved individual" is someone who has been convicted of a New York cannabis-related offense before March 31, 2021, or whose parent, spouse, child, legal guardian, or dependent has been convicted of a New York cannabis-related offense before then. To be a "qualifying business," a justice involved individual has to own at least 10% of the business and the business has to have realized profits for at least two years. *See* NYS OFF. OF CANNABIS MGMT., CAURD INFORMATION, <https://cannabis.ny.gov/caurd-info> (last visited Aug. 2, 2023); *see also* 9 NYCRR § 116.4 (a)(2)(i) (final rules for CAURD license). OCM also has allotted twenty-five licenses to non-profits (i) evidencing a history of creating vocational opportunities for incarcerated individuals and (ii) operating a separate profitable social enterprise which fulfills the parent non-profits social mission. *See* NYS OFF. OF CANNABIS MGMT., CAURD Information, <https://cannabis.ny.gov/caurd-info> (last visited Aug. 2, 2023).

⁴ The United States District Court for the Northern District of New York issued a preliminary injunction enjoining a portion of the CAURD program because the program "will have a discriminatory effect on out-of-state residents seeking a CAURD license." *Variscite NY One v. New York*, No. 1:22-cv-1013, 2022 WL 17257900, at *7 (N.D.N.Y. Nov. 10, 2022).

retail dispensary applications “*at the same time*,” and (ii) New York State’s separation of powers doctrine. *See* MRTA § 10(19) (emphasis added).

7. As a result of Defendants’ unconstitutional conduct, Plaintiffs—who are service-disabled veterans—and other individuals that the MRTA was designed to benefit⁵ have been prevented from applying for an adult-use license, and have been (and continue to be) irreparably harmed.

8. Accordingly, Plaintiffs are entitled to an order (i) declaring OCM’s CAURD license an *ultra vires* and unconstitutional licensing category that violates the MRTA and contravenes New York’s separation of powers doctrine, and (ii) enjoining Defendants indefinitely from awarding or further processing any more CAURD licenses and/or from authorizing any more CAURD licensees to open adult-use retail dispensaries.

PARTIES

9. Plaintiff Carmine Fiore is an individual that resides in Levittown, New York. Mr. Fiore is the founder of Fiore Enterprise, LLC and qualifies as a service-disabled veteran under Article 17-B of the New York Executive Law.

10. Plaintiff William Norgard is an individual that resides in New York, New York. Mr. Norgard is the founder of 2 Forest Park Lane, LLC and qualifies as a service-disabled veteran under Article 17-B of the New York Executive Law.

11. Plaintiff Steve Mejia is an individual that resides in Woodhaven, New York. Mr. Mejia is the founder of Blushed Petals, LLC and qualifies as a service-disabled veteran under Article 17-B of the New York Executive Law.

⁵ The CAURD program’s qualifying criteria disregards the MRTA’s priority preference for (i) minority and women-owned businesses, (ii) distressed farmers, and (iii) service-disabled veterans, by limiting CAURD eligibility only to applicants who are “justice involved” and own a profitable business. *See* MRTA § 87.

12. Plaintiff Dominic Spaccio is an individual that resides in Montour Falls, New York. Mr. Spaccio is the founder of MoxBeacon, LLC and qualifies as a service-disabled veteran under Article 17-B of the New York Executive Law.

13. Plaintiffs are service-disabled veterans that planned to pursue adult-use dispensary licenses when the application window first opened up (including social equity applicants who would qualify as priority or extra priority applicants under Section 87 of the MRTA).

14. Upon information and belief, and at all times relevant to this action, Defendant New York State Cannabis Control Board (“CCB”) was and is a government-appointed board that the MRTA established to promulgate rules and regulations for New York’s cannabis industry and vested with the powers and duties stipulated in Section 10 of the MRTA. It consists of a chairperson and four other voting members.

15. Upon information and belief, and at all times relevant to this action, Defendant New York State Office of Cannabis Management (“OCM”) was and is an independent office that the MRTA established within the Division of Alcoholic Beverage Control.

16. Upon information and belief, Defendant Tremaine Wright is, and was, at all times relevant to this action, the Chairwoman of CCB, having the powers and duties granted to her in her official capacity, and she is named in her official capacity.

17. Upon information and belief, and at all times relevant to this action, Defendant Chris Alexander is, and was, at all times relevant to this action the Executive Director of OCM, having the powers and duties granted to him in his official capacity, and he is named in his official capacity.

JURISDICTION AND VENUE

18. This Court has jurisdiction over Defendants pursuant to New York Civil Practice Law and Rules (“CPLR”) 301 because Defendants maintain their principal places of business in New York and/or regularly transact business in the State of New York.

19. Venue lies in Albany County pursuant to CPLR 505 because, upon information and belief, OCM’s and CCB’s principal offices are located in Albany, New York, and it is where Defendants failed to perform their legal duties and/or where the material events giving rise to Plaintiffs’ suit took place.

FACTS

THE MRTA’S STRUCTURE AND GOALS

20. On March 31, 2021, New York State enacted the MRTA to, *inter alia*, regulate and tax medical and adult-use cannabis and craft a licensing regime to authorize its cultivation, processing, distribution, and sale.

21. The statute delineated eleven adult-use license types and divided the market into essentially two tiers: production and retail. MRTA §§ 68-75, 77.

22. The different license types consist of: (i) adult-use cultivator license, (ii) adult-use processor license, (iii) adult-use cooperative license; (iv) adult-use distributor license, (v) adult-use dispensary license, (vi) microbusiness license, (vii) delivery license, (viii) nursery license, (ix) adult-use consumption license, (x) registered organization adult-use cultivator processor distributor retail dispensary license, and (xi) registered organization adult-use cultivator, processor and distributor license. *Id.*

23. The MRTA also created OCM as a separate and independent division of New York’s Division of Alcoholic Beverage Control, entrusted OCM with regulatory oversight of the

adult-use and medical market, and charged OCM with executing the powers and duties specified in the MRTA. *See id.* §§ 8-9, 11.

24. The statute also established CCB, which was to be appointed jointly by the Governor, the Assembly, and the Senate to oversee OCM, and obligated CCB to perform specified tasks, including the promulgation of rules and regulations. *See generally id.* §§ 7, 10.

25. Among other things, Section 10(19) obligated CCB to “[a]pprove the opening of new license application periods, and when new or additional licenses are made available pursuant to this chapter, provided, however, that *the initial adult-use cannabis retail dispensary license application period shall be opened for all applicants at the same time.*” *Id.* § 10(19) (emphasis added).

26. The MRTA does not authorize CCB or OCM to create new categories of licenses.

THE ULTRA VIRES CAURD PROGRAM

Background

27. “Social equity” is a term that is commonly used in the cannabis industry, but it carries multiple meanings.

28. Broadly speaking, “social equity” connotes the aspiration of state and local governments to redress the multi-generational trauma that draconian and outdated drug enforcement policies have inflicted on individuals and communities by prioritizing those adversely impacted communities in the award of adult-use cannabis licenses.

29. To date, these programs largely have failed because the federal prohibition on cannabis handicaps even the most nimble and well-financed cannabis company; small independent, veteran-owned and minority-owned cannabis businesses suffer these impediments

even more acutely.⁶

The Legislature Addresses Social Equity in the MRTA

30. Pursuant to New York State’s separation of powers doctrine, only the Legislature has the constitutional authority to develop a policy to address a social and economic problem that is as systemic as the ill-founded War on Drugs.

31. To that end, the Legislature addressed social equity at length in the MRTA.

32. For example, Section 87 of the MRTA provides that CCB “in consultation with the chief equity officer and executive director, and *after receiving public input shall create and implement a social and economic equity plan* and actively promote applicants from communities disproportionately impacted by cannabis prohibition, AND promote racial, ethnic, and gender diversity when issuing licenses for adult-use cannabis related activities . . . by prioritizing consideration of applications by applicants who are from communities disproportionately impacted by the enforcement of cannabis prohibition or who qualify as a minority or women-owned business, distressed farmers, or *service-disabled veterans.*” MRTA § 87(1) (emphases added).

33. The MRTA further provides that CCB’s “social and economic equity plan shall also promote diversity in commerce, ownership and employment, and opportunities for social and economic equity in the adult-use cannabis industry. A goal shall be established *to award fifty percent of adult-use cannabis licenses to social and economic equity applicants* and *ensure inclusion* of: (a) individuals from communities disproportionately impacted by the enforcement of cannabis prohibition; (b) minority-owned businesses; (c) women-owned businesses; (d)

⁶ See YVETTE MCDOWELL ET. AL., CALIFORNIA CANNABIS EQUITY ACCOUNTABILITY REPORT: AN ANALYSIS OF THE HEALTH AND SUCCESS OF CALIFORNIA’S SOCIAL EQUITY PROGRAM, CALIFORNIA CANNABIS INDUS. ASS’N (2021), <https://bit.ly/40UboRU>, a true and correct copy of which is attached hereto as Exhibit B.

minority and women-owned businesses . . . ; (e) distressed farmers . . . ; and (f) *service-disabled veterans*.” *Id.* § 87(2) (emphases added).

34. The MRTA also requires CCB to, “with recommendations from the state cannabis advisory board, the chief equity officer and executive director, issue guidelines to determine how to assess which communities have been disproportionately impacted and how to assess if someone is a member of a community disproportionately impacted.” *Id.* § 87(5)(g).

35. Finally, the MRTA obligates that the “Chief Equity Officer shall provide a report to the Board, no later than January 1, 2023, and annually thereafter, of their activities in ensuring compliance with the social and economic equity plan.” *Id.* § 12(3).

36. In short, the MRTA required CCB to create a “social and economic equity plan,” that would strive to achieve a goal of awarding 50% of adult-use cannabis licenses to, among other groups, “service-disabled veterans.” *Id.* § 87.

37. Despite the MRTA’s clear language, Defendants have embarked on an *ultra vires* law-making project to craft a new “social equity” policy that is inconsistent with the priorities of the Legislature—namely, the CAURD program.

**CCB Has Enacted Its Own Idea of Sound
Public Policy and Regulated on a Clean Slate**

38. The New York State Constitution does not authorize appointed administrators to craft their own social and economic policies. Rather, that duty is assigned to the Legislature. Administrative agencies—such as defendants—are solely permitted to engage in “‘interstitial’ rule making.” *Boreali v. Axelrod*, 71 N.Y.2d 1, 13 (1987).

39. The creation of the CAURD program—and the change to the initial licensing window for adult-use retail dispensaries—epitomizes the kind of administrative overreach that New York State’s Constitution, and the case law interpreting it, prohibit. *See id.* at 15; *see also*

N.Y. Statewide Coal. of Hispanic Chambers of Commerce v. N.Y.C. Dep't of Health & Mental Hygiene, 23 N.Y.3d 681 (2014).

40. In fact, the CAURD program's rules and regulations (which are set forth in 9 NYCRR § 116.1-116.9) trigger all four of the "coalescing circumstances" that the New York Court of Appeals created to determine whether an executive agency has acted beyond the legitimate "interstitial" rule making" in which it is permitted to engage. *Boreali*, 71 N.Y.2d at 11, 13.

41. Here, as set forth above, the MRTA required CCB to (i) create a "social and economic equity plan" that would strive to achieve a goal of awarding 50% of adult-use cannabis licenses to, among other groups, "service-disabled veterans," and (ii) ensure that "***the initial adult-use cannabis retail dispensary license application period shall be opened for all applicants at the same time.***" MRTA §§ 87(2), 10(19) (emphasis added).

42. As a threshold matter, CCB did not provide its "social and economic equity plan" by January 1, 2023. Rather, CCB published it in May 2023.⁷

43. While the "social and economic equity plan" remained outstanding, Defendants created the CAURD category of licenses. Only "justice involved individuals" who operate "qualifying businesses" were eligible to apply for a CAURD license. *See* 9 NYCRR § 116.4(a)(2)-(3).

44. But none of the MRTA's eleven licensing types includes a CAURD license.

45. Similarly, none of the MRTA's provisions limits "social equity" to "justice involved individuals" with "qualifying businesses."

46. In other words, Defendants invented a new licensing category out of whole cloth

⁷ Cannabis Control Board Resolution No. 2023-17, NYS OFF. OF CANNABIS MGMT., Resolution To Approve The Social And Economic Equity Plan (May 11, 2023), <https://cannabis.ny.gov/system/files/documents/2023/05/ccb-see-plan-resolution-5-11-23.pdf>, a true and correct copy of which is attached hereto as Exhibit C.

that is at odds with the statutory requirements.

47. Defendants then doubled down by violating the MRTA a second time.

48. Specifically, Defendants decided to open the application window for adult-use retail dispensaries for CAURD applicants *only*, and not any other category of social equity candidates (including, but not limited to, applicants that may be from communities disproportionately impacted by the enforcement of cannabis prohibition, minority-owned businesses, women-owned businesses, distressed farmers, or service-disabled veterans).

49. To date, Defendants have only permitted CAURD applicants to apply for adult-use retail dispensaries.

50. Thus, no social equity applicants (such as Plaintiffs) or other applicants have been permitted to apply for (much less open) an adult-use retail dispensary.

51. Defendants' conduct directly contravenes the Legislature's express mandate in Section 10(19) of the MRTA to open "the initial adult-use cannabis retail dispensary license application period . . . for *all applicants at the same time*." MRTA § 10(19) (emphasis added).

52. Defendants' promulgation of the CAURD program—and their decision to open the application window for only CAURD applicants—reflects Defendants' own ideas of social and economic equity and constitutes impermissible legislating by an administrative agency.

The Legislature Could Have—But Did Not—Create the CAURD Program

53. In 2022, the Legislature amended the MRTA to create S.8084-A,⁸ which was intended to benefit hemp farmers and hemp processors.

54. S.8084-A creates "a conditional adult-use cannabis *cultivator* license" for hemp cultivators and a "conditional adult-use cannabis *processor* license" for hemp processors. S.8084-

⁸ See N.Y. S.B. 8084-A, 244th Leg. Sess. (N.Y. 2022) ("S.8084-A").

A (emphases added).

55. Had New York’s Legislature intended to create a CAURD license, it could have included the appropriate legislation in these amendments.

56. The Legislature, however, did not add a new retail cannabis dispensary license class—conditional or otherwise.

57. Upon information and belief, the Legislature proposed to amend the MRTA to add a basis for the CAURD program. But such an amendment was not approved.

58. The absence of such Legislative action further supports a finding that the Defendants’ conduct violates *Boreali* and is unconstitutional.

**Defendants Did Not Exercise Any Special Expertise
or Technical Competence in Creating the CAURD Program**

59. Finally, there is no evidence that Defendants drew upon any special expertise or technical competence in cannabis or in social equity policy in creating the CAURD program.

60. CCB is an executive body appointed by the Governor and the Legislature. The Governor appoints the Chairperson along with two other board members, and the President of the Senate and the Speaker of the Assembly may exercise one appointment each. *See* MRTA § 7(1)-(2).

61. The Governor also selects the Executive Director of OCM with the advice and consent of the Senate. *See id.* § 9.

62. The MRTA does not require CCB or OCM to possess any special competence.

63. By all accounts, CCB did not invoke any technical competence or special expertise in determining to create the CAURD program.

64. Following the appointment of CCB’s Chairperson, Tremaine Wright, then-Senator Diane Savino commented as follows: “You [Tremaine Wright] have experience in a lot of things.

But I'm concerned that you don't have direct experience in the cannabis industry itself.”⁹

65. In addition, and as set forth above, the CAURD program was promulgated *before* any social and economic plan was created.

66. Moreover, and perhaps more importantly, the CAURD program does not fit within the definition of “social equity” set forth by the Legislature.

67. Rather, it is a version of social equity that has been conjured up by non-elected officials who are, as administrators, not authorized to make such social and economic policy decisions.

**PLAINTIFFS WILL SUFFER IRREPARABLE
HARM IN THE ABSENCE OF AN INJUNCTION**

68. When Defendants initially created the CAURD program, they limited the number of licenses to be issued to 175.

69. But in the last two months—while other actions challenging the constitutionality of the CAURD program have been pending, *see Coal. for Access to Regulated & Safe Cannabis v. New York State Cannabis Control Bd.*, Index No. 902390-23 (Sup. Ct. Albany County) (the “Coalition Suit”)—Defendants increased the number of CAURD licenses to 463, or by more than 264%.

70. In the meantime, Defendants continue to prohibit anyone other than CAURD applicants from applying (or obtaining) an adult-use retail dispensary license.

71. Thus, Plaintiffs have been unable to apply for a license and enter New York's nascent adult-use cannabis market.

72. By being precluded from entering the marketplace through unconstitutional

⁹ See James Nani, *NY Senate Confirms Two Key Cannabis Officials*, LAW360 (Sept. 2, 2021), <http://bitly.ws/Bup4>, a true and correct copy of which is attached hereto as Exhibit D.

measures (and in direct contravention of the MRTA), Plaintiffs are losing critical time to develop the goodwill that first movers typically enjoy.

73. In addition, Plaintiffs are losing valuable retail locations that are being awarded to CAURD applicants while the remaining social equity applicants remain unable to even apply for a license (much less obtain one and become operational).

74. All of this has inflicted immediate, tangible, and irreparable harm on Plaintiffs, who will continue to suffer such harm in the absence of an injunction.

FIRST CAUSE OF ACTION
(Declaratory Judgment)

75. Plaintiffs repeat and reallege the allegations set forth in Paragraphs 1 to 74 as if fully set forth herein.

76. The separation of powers is a core tenet of the New York State Constitution which serves to preclude administrative agencies from engaging in unauthorized policymaking based on complex value judgments which should otherwise fall under the purview of the Legislature.

77. Section 10(19) of the MRTA directs CCB and OCM to:

Approve the opening of new license application periods, and when new or additional licenses are made available pursuant to this chapter, provided, however, that *the initial adult-use cannabis retail dispensary license application period shall be opened for all applicants at the same time.*

MRTA § 10(19) (emphasis added).

78. The MRTA also states (i) that “any person may apply to the board for a license to . . . dispense cannabis within this state for sale,” *id.* § 61, and (ii) its goal of ensuring “a competitive market where no licensee is dominant in . . . any individual category of licensing,” *id.* § 64(3).

79. Moreover, Section 87 of the MRTA states that CCB should aspire “to award *fifty percent* of adult-use cannabis licenses to social and economic equity applicants” and to prioritize the inclusion of applicants who (i) qualify as minority-owned businesses, women-owned

businesses, distressed farmers, and *service-disabled veterans*, or (ii) are from communities disproportionately impacted by cannabis prohibition. *Id.* § 87 (emphasis added).

80. Rather than adhere to these (and other) statutory mandates, CCB and OCM have engaged in unconstitutional policymaking that (i) violates the separation of powers by exceeding the scope of their authority under the MRTA, (ii) enacts quasi-legislative policy programs that contravene the expressly stated goals of the MRTA, and (iii) improperly prejudices all but a small class of potential applicants by denying them the right to apply for adult-use cannabis retail dispensary licenses “at the same time.” *See id.* § 10(19).

81. More specifically, Defendants have (i) created a licensing category of “justice involved individuals” with a “qualifying business” even though this category does not appear anywhere in the MRTA, (ii) permitted these so-called “CAURD applicants” to apply for retail dispensary licenses before opening the application period to any other non-CAURD applicant, and (iii) forced non-CAURD applicants (including those with a priority designation under the MRTA) to wait indefinitely until Defendants decide to “press the green button”¹⁰ (in the words of OCM’s Executive Director, Defendant Chris Alexander) and permit them to apply for a retail dispensary license.

82. Such unconstitutional conduct is not authorized by the MRTA. In fact, it actively *undermines* the policy goals stated in Section 2 of the MRTA by, *inter alia*, hampering (i) the creation of a robust adult-use market, (ii) the generation of new tax revenue, (iii) the creation of more jobs, and (iv) the strengthening of New York’s agricultural sector.

83. As officers and agencies of the executive branch, Defendants have impermissibly

¹⁰ See Jesse McKinley and Grace Ashford, *New Yorkers with Marijuana Convictions Will Get First Retail Licenses*, N.Y. TIMES (Mar. 9, 2022), <http://bitly.ws/pqNK>, a true and correct copy of which is attached hereto as Exhibit E.

exceeded their statutory authority under the MRTA (and improperly frustrated its policy goals) by, among other things, creating a staggered, two-tiered application process that permits only “justice involved” applicants with “qualifying businesses” to apply for and obtain retail dispensary licenses while preventing all other would-be applicants from even applying for retail dispensary licenses for an indeterminate period of time.

84. Through their *ultra vires* policymaking, Defendants have usurped the Legislature’s authority by elevating their own chosen class of CAURD applicants at the expense of all other prospective applicants and the creation of a robust, competitive, safe, and regulated adult-use cannabis market in accordance with the goals of the MRTA.

85. Accordingly, Plaintiffs respectfully request that this Court issue a declaratory judgment pursuant to CPLR 3001 finding Defendants’ *ultra vires* policymaking unconstitutional under the separation of powers doctrine.

SECOND CAUSE OF ACTION
(Injunctive Relief)

86. Plaintiffs repeat and reallege the allegations set forth in Paragraphs 1 to 85 as if fully set forth herein.

87. As set forth above, Defendants have engaged in unconstitutional policymaking in violation of New York’s separation of powers doctrine in creating the CAURD program.

88. Accordingly, this Court should issue (i) a temporary restraining order and preliminary injunction enjoining Defendants from awarding or further processing any more CAURD licenses, and/or conferring operational approval upon any more provisional or existing CAURD licensees until such time as this Court adjudicates the competing motions for summary judgment in the Coalition Suit, and (ii) a permanent injunction enjoining Defendants from awarding or further processing any more CAURD licenses and/or from authorizing any more

CAURD licensees to open adult-use retail dispensaries.

89. Such an injunction is warranted because, as set forth above, the CAURD program is unconstitutional, and thus Plaintiffs are likely to prevail on the merits.

90. In addition, New York courts have found that an alleged violation of New York's constitutional principles constitutes irreparable harm.

91. Moreover, allowing the CAURD program to go unabated will present clear irreparable harm to Plaintiffs because the CAURD applicants will take market share and potential retail locations away from Plaintiffs (and other social equity and non-social equity applicants).

92. In addition, Plaintiffs, who have priority status under the MRTA as service-disabled veterans, have expended significant time and money in order to prepare to apply for a retail dispensary license and have been prevented, indefinitely, from doing so, and thus Plaintiffs have been, and will continue to be harmed.

93. Finally, Defendants will not suffer any harm as a result of the injunction requested.

94. For all these reasons, Plaintiffs request that the Court issue an injunction.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the Court enter an order and judgment against the Defendants as follows:

(a) On their First Cause of Action, declaring that Defendants CAURD licensing regime constitutes an unconstitutional violation of the separation of powers doctrine;

(b) On their Second Cause of Action, entering (i) a temporary restraining order and preliminary injunction enjoining Defendants from awarding or further processing any more CAURD licenses, and/or conferring operational approval upon any more provisional or existing CAURD licensees until such time as this Court adjudicates the competing motions for summary

judgment in the Coalition Suit, and (ii) a permanent injunction enjoining Defendants from awarding or further processing any more CAURD licenses and/or from authorizing any more CAURD licensees to open adult-use retail dispensaries;

(c) Awarding Plaintiffs costs and disbursements, including Plaintiffs' attorneys' fees; and/or

(d) Granting such other and further relief as the Court deems just and proper.

Dated: August 2, 2023
New York, New York

/s/ Patrick J. Smith

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